



MINNESOTA  
DEPARTMENT OF  
COMMERCE

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## BULLETIN 2005-1

### STATE OF MINNESOTA

### DEPARTMENT OF COMMERCE

**DATE:** JANUARY 6, 2005

**TO:** ALL PROPERTY & CASUALTY INSURERS WRITING  
COMMERCIAL LINES INSURANCE PRODUCTS (OTHER THAN  
WORKERS' COMPENSATION INSURANCE)

**RE:** UNCERTAINTY RELATED TO EXPIRATION OF  
THE TERRORISM RISK INSURANCE ACT OF 2002  
EXCLUSIONS RELATED TO ACTS OF TERRORISM

**FROM:** GLENN WILSON, COMMISSIONER – MINNESOTA  
DEPARTMENT OF COMMERCE

  
GLENN WILSON, Commissioner of Commerce

*Note: This document is based on the NAIC's Second Model Terrorism Bulletin. It is being distributed to identify Minnesota-specific information. Substantive Minnesota-specific information, is indicated by boldface type.*

#### Background

The Terrorism Risk Insurance Act of 2002 (TRIA) was adopted by Congress to provide a temporary federal shared loss program for incurred losses resulting from certain acts of terrorism to protect American businesses by minimizing market disruptions and ensuring the widespread availability and affordability of property and casualty insurance for terrorism risk. Recently there has been uncertainty in the markets for commercial lines property and casualty insurance coverage because of the pending expiration of TRIA. While TRIA's December 31, 2005 expiration date appears to be in the distant future, insurers will be called upon to make decisions about commercial insurance coverage late in 2004.

The commercial insurance business cycle operates in such a way that insurers and their policyholders will be required to make decisions as early as September, 2004 that will affect coverage well into 2006. Annual policy renewals with effective dates of January 1, 2005 or later will have to contemplate no

federal backstop for any losses resulting from certain acts of terrorism in 2006. For this reason, regulators expect that insurers and advisory organizations will file conditional exclusions for terrorism coverage and will attach them to renewal policies on a widespread basis.

This places insurers, businesses and regulators in the same situation that was encountered in the aftermath of September 11<sup>th</sup> and which in large part prompted TRIA's enactment. Once again, insurance regulators find themselves having to consider approval of certain coverage limitations for acts of terrorism or risk possible serious solvency concerns in the insurance industry.

The intent of this Bulletin is to inform you of the decision in Minnesota to accept without formal review and approval certain conditional coverage limitations for acts of terrorism, to put insurers on notice that determination of certain contractual thresholds is subject to disclosure and acceptance by this office and to provide a voluntary procedure for insurers to use to expedite the filing and timely acceptance of these limited exclusions. As commissioner I was involved in recent discussions at the National Association of Insurance Commissioners (NAIC) related to this issue. In a recent conference call the members of the NAIC agreed that the conditional endorsement approach, while not providing a perfect solution, offers the best hope for adding some certainty to address TRIA's hard ending should Congress fail to enact an extension of TRIA. By this Bulletin, I am informing you of my intent to act in a manner consistent with the recommendation from the NAIC membership. I believe this to be the best course of action as it balances the need of insurers to have some certainty related to solvency concerns with the business consumer's concerns that their businesses not be subject to uninsured events.

Instead of accepting the very broad total exclusions of coverage for acts of terrorism, Minnesota intends to accept (without formal review and approval) conditional coverage limitations that are substantially similar to those described in the following pages.

## **Explanation and Instructions for Expedited Processing of Filings**

### **1. Forms**

The coverage limitations that will be accepted by Minnesota have some significant restrictions. However, they continue to provide coverage for acts of terrorism under certain circumstances.

For policies providing property insurance coverage, the following limitations apply:

- Exclusion for acts of terrorism only apply if the acts of terrorism result in industry-wide insured losses that exceed \$25,000,000 for related incidents that occur within a 72 hour period;
- Exclusions for acts of terrorism are not subject to limitations above if:
  - The act involves the use, release or escape of nuclear materials, or that directly or indirectly results in nuclear reaction or radiation or radioactive contamination;
  - The act is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
  - Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials.

For policies providing liability insurance coverage, the following limitations apply:

- Exclusion for acts of terrorism only apply if the acts of terrorism result in industry-wide insured losses that exceed \$25,000,000 for related incidents that occur within a 72 hour period; or
- Fifty or more persons sustain death or serious physical injury. For purposes of this provision serious physical injury means:
  - Physical injury that involves a substantial risk of death;
  - Protracted and obvious physical disfigurement; or
  - Protracted loss of or impairment of the function of a bodily member or organ.
- Exclusions for acts of terrorism are not subject to limitations above if:
  - The act involves the use, release or escape of nuclear materials, or that directly or indirectly results in nuclear reaction or radiation or radioactive contamination;
  - The act is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
  - Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials.

Minnesota will accept the following definition of acts of terrorism or definitions that are more liberal to policyholders:

Terrorism means activities against persons, organizations or property of any nature:

1. That involve the following or preparation for the following:
  - a. Use or threat of force or violence; or
  - b. Commission or threat of a dangerous act; or
  - c. Commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and
2. When one or both of the following applies:
  - a. The effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or
  - b. It appears that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social or economic objectives or to express (or to express opposition to) a philosophy or ideology.

Minnesota will allow insurers and advisory organizations to submit and have accepted without formal review and approval conditional endorsements. These conditional endorsements will apply only if Congress either (1) fails to enact an extension of TRIA or (2) enacts changes to TRIA that substantially change the risk of loss that an insurer or policyholder had previously assumed under the original TRIA program.

For an insurer or advisory organization to receive expedited acceptance of its exclusions for commercial lines insurance coverages, the exclusionary endorsements must comply with the terms and conditions set forth in this Bulletin and be submitted in accordance with the instructions specified below. Further, the insurer or advisory organization must certify that it is filing endorsements that provide coverage, which is at least as broad as that described in this Bulletin.

Insurers should be aware that although policy form language will provide that the insurer is to make a determination regarding when any of the thresholds described in this Bulletin have been reached for purposes of settling a claim, insurers should be ready to substantiate any decision made to deny benefits

to a claimant, subject to the provisions of Chapter 72A, Regulation of Trade Practices, Minnesota Statutes.

### Minnesota Standard Fire Policy Provision

Minnesota Statute 65A.01, Subd. 3, states that an insurer “shall not be liable for loss by fire or other perils insured against in a commercial policy, caused directly or indirectly, by terrorism, unless an endorsement specifically assuming coverage for loss or damage caused by terrorism is attached to the policy.”

## 2. Rates & Rules

Minnesota will allow insurers and advisory organizations to submit and have accepted without formal review and acceptance conditional rates and rules, which correspond to the conditional endorsements. These conditional rates and rules will apply only if Congress either (1) fails to enact an extension of TRIA or (2) enacts changes to TRIA that substantially change the risk of loss that an insurer or policyholder had previously assumed under the original TRIA program.

The Department strongly encourages insurers to provide their policyholders with a disclosure notice regarding the possibility of additional premium payable in event that any conditional endorsement attached to the policy is activated due to the discontinuation of TRIA. Such disclosure notices should be filed with the Department or in an internal (drawer) filing, as appropriate. (See “Minnesota Reminder” below.) The Department will not provide insurers with any recommended disclosure wording.

### Forms with Instructions

Attached to this Bulletin is a uniform filing transmittal form that has been agreed upon by Minnesota and other states. A filer wishing to receive expedited treatment of its filing for acceptance without formal review and approval shall complete the EXPEDITED FILING—TERRORIST EXCLUSIONS APPLICATION Form Filing Transmittal as directed. In addition, the filer submitting this filing must certify that it is filing endorsements that provide coverage at least as broad as described in this Bulletin. Certification is made by signing the appropriate blank on the transmittal form.

To be complete, a form filing (along with any corresponding rates and rules) must include the following:

1. A completed, certified Expedited Filing – Terrorist Exclusions Application Form Filing Transmittal for each insurer or advisory organization, in duplicate.
2. A completed Minnesota Filing Certification Form.
3. One copy of each endorsement that the insurer intends to use, unless the insurer has given an advisory organization authorization to file them on its behalf.
4. The appropriate filing fees. (Forms - \$75.00 per company/advisory organization per line of insurance; Rates/Rules - \$75.00 per company/advisory organization per line of insurance.)
5. A postage-paid, self-addressed envelope to accommodate the acknowledgment copy of the filing.
6. A cover letter.

A comparable expedited filing transmittal form is available in SERFF.

If you wish to have a copy of the Expedited Filing -- Terrorist Exclusions Application Form Filing Transmittal returned to you, enclose an additional (third) copy.

#### Minnesota Reminder

For those commercial lines of insurance that are exempt from having to be filed with the Department, companies will be required to make the usual internal (drawer) filings. See Department of Commerce Bulletin 95-2 dated January 25, 1995 or Minnesota Code of Administrative Rules 2700.2460 through 2700.2480.

#### Effective Date

This Bulletin shall take effect immediately and shall expire on December 31, 2005, in the event that Congress acts to extend or modify TRIA.

#### Contacts

Questions regarding this Bulletin should be directed to Mr. Thomas Baker at (651) 297-2853.

**EXPEDITED FILING— COMMERCIAL LINES TERRORIST EXCLUSIONS APPLICATION**

Ed. 6/1/04

This page applies to the following state(s) \_\_\_\_\_

Department Use only

Company Name(s)	Domicile	NAIC #	FEIN #

**Contact Info for Filer**

Name and address of Filer(s)	Telephone #	FAX #	e-mail

**Filing information**

Line of Insurance (see attachment)	
Company Program Title (Marketing title) (if applicable)	
Filing Type ** see note below	
This application is used with:	
Effective Date Requested	
Filing date	
Company Tracking Number	
Date filing approved in domiciliary state	

	Component/Form Name /Description/Synopsis	Form #) Include edition date	Replacement Or withdrawn?	If replacement, give form # it replaces	Previous State Filing Number, if required by state
01			<input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn <input type="checkbox"/> Neither		
02			<input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn <input type="checkbox"/> Neither		

To be complete, a form filing must include the following:

- A completed Form Filing Transmittal Document for each insurer.
- One copy of each endorsement.
- The appropriate filing fees, if required.
- A postage-paid, self-addressed envelope large enough to accommodate the return.

The insurer(s) submitting this filing certifies that it is:

Using endorsements that provide coverage that is at least as broad as described in the bulletin.

Signature \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**COMPLETED SAMPLE FORM**

**EXPEDITED FILING—COMMERCIAL LINES TERRORIST EXCLUSIONS APPLICATION**

Ed. 6/1/04

This page applies to the following state(s) \_\_\_\_\_

Department Use only

Company Name(s)	Domicile	NAIC #	FEIN #
ABC Insurance Company	NY	0000-99999	99-1234567

**Contact Information for Filer**

Name and address of Filer(s)	Telephone #	FAX #	e-mail
John Doe (Form Filing) Regulatory Compliance ABC Insurance Co. 12345 Fifth Ave New York, NY 10234	501-555-5555	501-555-5551	John.doe@abcins.com

**Filing information**

Line of Insurance (see attachment)	Commercial General Liability
Company Program Title (Marketing title) (if applicable)	General Liability Program
Filing Type ** see note below	Form (Endorsement)
This application is used with:	(Insert policy form number to which the application attaches)
Effective Date Requested	08-01-04 (Enter your desired effective date)
Filing date	(Date Company sends filing)
Company Tracking Number	ABC-EP-2004-01 (Enter your filing tracking number, if applicable)
Date filing approved in domiciliary state	Not approved yet. Filed on same date as this filing.

	Component/Form Name /Description/Synopsis	Form #) Include edition date	Replacement Or withdrawn?	If replacement, give form # it replaces	Previous State Filing Number, if required by state
01	Conditional Terrorism Coverage Limitation Endorsement	CG 21 69 01 02	<input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn <input checked="" type="checkbox"/> Neither		
02			<input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn <input type="checkbox"/> Neither		

To be complete, a form filing must include the following:

- A completed Form Filing Transmittal Header for each insurer.
- One copy of each endorsement.
- The appropriate filing fees, if required
- A postage-paid, self-addressed envelope large enough to accommodate the return.

The insurer(s) submitting this filing certifies that it is:

Using endorsements that provide coverage that is at least as broad as described in the bulletin.

Signature \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

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